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The Reformation and the Renaissance were great parallel events. We think that Professor Fisher's work would have been more satisfactory if this had been more distinctly kept in view throughout. It is only when they are regarded as inseparable that we can say "that the problem of the reconciliation of religion and culture is one for the solution of which Protestantism has the key."

In the printing we notice only a few trifling errors. The expressions, "French Parliament" (p. 49) and "German king" (p. 103) are not accurate; Margaret did not compose the "Heptameron" in her later days (p. 246), but began it in her nineteenth year; Mary of England was not succeeded by Edward VI. But these are very trifling matters, which deserve mention only that they may be corrected for another edition. They only bring out in stronger relief the uniform correctness of the work.

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5.—*Handbuch der Römischen Alterthümer.* Von JOACHIM MARQUARDT und THEODOR MOMMSEN. Erster Band: *Römisches Staatsrecht.* Von TH. MOMMSEN. I. Leipzig: Verlag von S. Hirzel. 1871. 8vo. pp. xviii and 527.

ROMAN antiquities may conveniently be treated in several different methods. For many purposes the best arrangement is the alphabetical one of a dictionary, each topic being treated independently: this is the sole method familiar to English students, as the only complete treatise on classical antiquities which we possess is Dr. Smith's valuable series of dictionaries, inferior, however, in everything but the externals to Pauly's *Encyclopädie der Alterthumswissenschaft*. Lange's *Römische Alterthümer*, to whose merits we recently called attention,\* is arranged on the principle of historical development, and may as correctly be called a constitutional history as a treatise on antiquities. The third great German treatise, the Becker-Marquardt *Handbuch der Römischen Alterthümer*, has a systematic arrangement; Topography, Constitution, Administration, Worship, and Private Life are assigned to separate volumes, and in each volume the subjects are arranged in their natural order, but each is treated independently. Of course each method requires a certain degree of the other. Lange has a separate chapter for the systematic treatment of each special topic, and Becker and Marquardt follow the chronological order under each head.

Becker and Marquardt's *Handbuch* has been for some years out of print; and in meeting the demand for a new edition, the part which

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\* See North American Review, October, 1872.

Becker had completed before his death — the Constitution (Vol. II. of the original work) — is assumed by Mommsen, who makes of it, however, not a revision, but an entirely new work, on a totally different plan. This is the logical development of the constitution from its most fundamental ideas; the institutions are treated dogmatically, from the point of view of the theory which underlies them, and in recognition of the precision and rigorous logic which characterized the legal conception of the Romans.

The fundamental principle in Mommsen's theory of the Roman constitution, from which his discussion starts, is the *imperium*, or full power of command, *volles Befehlsrecht*, which, in the earliest constitution, was possessed without restriction by the highest magistrate, the king: all other magistrates exercised command only in virtue of authority issuing from him. In a certain sense, in its relation to the constitution as a whole, *imperium* may be considered as equivalent to the modern *sovereignty*; it was not identical with sovereignty, however, for, at least in republican times, it was distinctly recognized that sovereignty resided in the people, and that the *imperium* was conferred by them. Further, the entire authority of the state, however, was derived from the gods, in their will as expressed by signs distinctly sent to the possessors of the *imperium*, the magistrates, and interpreted according to fixed rules. To any one, therefore, who has an accurate conception of the religious side of the Roman constitution, and the degree in which it was conceived to emanate from the divine powers, it will not seem strange that the book opens with a chapter upon the Auspices, as the essential foundation of the *imperium*. The two terms are, indeed, he says, essentially identical; "in fact, only indicate the same conception from different points of view, — the one of intercourse with heaven, the other with earth." (p. 15.)

As *imperium*, or unlimited power to command, is the fundamental idea of Roman constitutional law, so in the history of the *imperium* is read the history of the constitution. "The entire internal history of the Roman constitution is summed up in the weakening of the *imperium*." (p. 56.) The establishment of the republic consisted essentially in a twofold weakening of the *imperium*, — by dividing it between two colleagues with equal powers, and by limiting its tenure to a year's time. These two principles, together with a third, the recognition of the sovereignty of the community, as expressed in the right of appeal, *provocatio*, are given (p. 94) as the distinctive conceptions of the republic; "neither of which can be carried back to the Monarchy, nor dispensed with in the Republic." The republican institutions of Rome set out, therefore, with the *collegialität* of the *imperium*; by which is

meant that each of the two colleagues possesses the full power of command, exactly as it was possessed by the kings, except that it is possessed only for a year, and that his colleague, the possessor of a *par potestas*, has a power of hindering, *intercessio*, commensurate with the power of command. This important power, resulting from the collegiate character of the magistracy, is justly characterized (p. 216) as "in itself nothing but a development of the magisterial right in general, and the necessary reverse (*Kehrseite*) to its positive function."

The establishment of the republic, with the collegiate relation, not merely in the case of the highest magistrates, but, as a general rule, in the tenure of magistracies, is the first step in the weakening of the *imperium*. Soon a new principle came in, the development of which lies at the bottom of the most important later constitutional changes. This was *Competenz* or limitation of functions. The *imperium*, as held by the consuls, had no limitations except those defined above, which had reference, not to its sphere, but its degree and the responsibility attached to it. If the two consuls divided their work between them, — if one went into the field while the other stayed in the city, if one went against the Veians and the other against the Æquians, — this was simply a private arrangement between them, legally binding upon neither; either could go into the other's province, and exercise there his full power of command.

This new principle of *Competenz* operated by the establishment of inferior grades of magistrates, with defined powers, but deriving their powers from the comitia of the people, not from the magistrates above them. In earlier times the inferior officials were not magistrates; their powers were delegated to them by the king or consul, whose functionaries they were, and under whose *imperium* and auspices they acted; this was originally the case with the quæstorship. But, as the republic went on, a number of lower magistracies were established, whose authority emanated from the people; and, although the consul, by virtue of his *major potestas*, had a certain authority over the prætor, ædile, and quæstor, especially in the way of prohibition, yet he could not himself undertake their functions. The prætor, for example, was in a certain sense the colleague of the consul, and possessed the full *imperium*, by virtue of which he could exercise all the functions of the consul, if there was need; his power was, however, a *minor potestas* as towards the consul, in whose presence his *imperium* was suspended. On the other hand, the consul could not exercise civil jurisdiction; for this power was specially conferred by law upon the prætor alone.

A still more remarkable limitation of the supreme executive power was the tribunate of the plebs. The plebs is, he says (p. 46), "an

association of the entire body of citizens, with the exception of the old burgher [patrician] families, which from the beginning is, and desires to be, more than a mere private corporation, and puts forward the claim, which at last it makes good, to place its corporate self-government on an equality with the self-government of the community (*lex sive id plebi scitum est*).” The ordinances of this corporation acquired by law, as is well known, the force of statutes; and in like manner the officers of the corporation (tribunes and plebeian ædiles) came to be magistrates of the community, although these officers were elected and these ordinances passed in an assembly which excluded a certain number of the citizens, and therefore could not be, in the strict sense of the terms, *magistrates* and *laws*. It was a process very analogous to that of the mediæval municipalities, in which guilds and other private associations were invested with powers of government, and thus became public bodies, with political instead of merely corporate powers. This most important and interesting subject — the history and powers of the tribunate — is treated in this volume only incidentally; it would therefore be premature to discuss in detail the views presented. It will be enough to say that they consist mainly of two points, — that the tribunes, when they had acquired the position of magistrates of the whole people, were in possession of a *major potestas*, as towards every other magistrate, except the dictator; and that the imperial dignity was essentially developed from this plebeian magistracy. That the power of the tribune was higher than that of the consul, is a startling doctrine, which rests mainly upon the fact that the tribune could “intercede” against the consul, while the reverse was not the case; and that the tribunes possessed extraordinary powers of *coercitio* against the consuls, being themselves, as *sacrosancti*, wholly exempt from any such control. It should be noticed, however, that this *major potestas* was essentially of a negative nature, consisting merely in forbidding and obstructing; and that the tribunes were wholly devoid of the *imperium*, or power to command.

This whole volume may, therefore, be described as an analysis of the doctrine of the *imperium*, and history of its development. It is, as might be expected, far from being an elementary treatise. It requires in the reader a thorough preliminary knowledge of Roman institutions, which alone will enable him to follow the close reasoning and detailed illustrations of the discussion. Abstruse as much of the reasoning is, profound in erudition and compact in expression, it is nevertheless characterized by the vigor and lucidity for which Mommsen is distinguished. No words are wasted in irrelevant discussion, and the arrangement is so good, and the table of contents so full, — of course there is no index

to an unfinished work, — that it is always easy to find what one wants, and, when found, it is exactly what one desires to know.

It would require too much space to enter into all the questions which receive new light from the detailed discussions of this remarkable book. It will be well, however, to mention some of the most important points in which the views here presented are at variance with the prevailing views. In opposition to Rubino, whom he follows in general on the subject of the auspices, he holds that it was not by a mere declaration *de cælo servasse*, but by an actual announcement (even false) that lightning had been seen, that the *comitia* were deferred. On the subject of the *Lex curiata de imperio*, he takes the ground that this law did not confer the *imperium*, which the magistrate already held in virtue of his office; but that its effect was to pledge the community to recognize and obey his authority, — for the matter of that, the law extended to the mere *potestas* of the lower magistrates, as well as to the *imperium* of the higher ones. The military *sacramentum* was precisely analogous in this respect.

In regard to the responsibility of the magistrates, which is usually assumed to exist only at the close of their term of office, the doctrine is here presented (p. 90) that in theory there was a complete responsibility even during the term of office, as soon as the republic had introduced “collegiality” and annual terms of office, but that there was a practical irresponsibility of the highest magistrate, from the fact that there was no one of power superior to his own who could enforce the responsibility. With the establishment of the tribunate, with *major potestas*, the consul was at once subjected to an effective control; not, however, by legal process, since this was administered by the prætor, a magistrate with *minus imperium*. In like manner the common doctrine of the irremovability of magistrates is held (p. 513) to be only true of the usual procedure. “Without question the right of the popular assembly to remove any magistrate played as important a part in the Roman theory, as keystone of the democratic constitutional law, as its practical application, especially towards the regular patrician magistrates, was, in the better periods, absolutely refrained from.”

Of other topics which receive a new light, we will especially mention the distinction of the *imperium domi* and *militiæ* (p. 95), the theory of the pro-magistracy, upon which, next to the tribunate, the empire was built (p. 350); and the discussion of the rules which regulated the iteration and intervals of the several magistracies, which are subjected to a searching investigation, extending over more than fifty pages (pp. 423 – 476). The succeeding volumes will be looked for with eager interest, although it is not likely that either of them will present so

much that is new as the present; since the second is to treat in detail of the several magistracies, the general theory of which is established by the present volume; while the third,—“The Citizens and the Senate,”—will cover ground and embrace results already made familiar by the *Römische Forschungen*.